

1 THE WITNESS: I think what I've done --

2 MR. FERGUSON: It's not a question.

3 BY MR. VESS:

4 Q. It's really not. I'll rephrase it.

5 You were cataloging because you wanted  
6 protection, right?

7 A. Yes.

8 Q. And you knew you were being cheated?

9 A. Yes.

10 Q. And you knew all that by mid-2009?

11 A. Yes.

12 Q. But you never, at that time, put any of that in  
13 writing?

14 A. That's correct.

15 Q. And the question is, why not?

16 A. Because I felt what I was doing was sufficient  
17 enough.

18 Q. Now, even today when you saw Mr. Hilinski [sic],  
19 you walked over to him --

20 A. Mr. Browning.

21 Q. Thank you -- Mr. Browning, and you made a  
22 comment to him here in this room; is that true?

23 A. That's correct.

24 Q. And what did you say to him?

25 A. "I'm going to blow this whole thing up."

1 Q. And what did that mean?

2 A. That means I'm going to go on record as telling  
3 you the nature of the business of lcx.

4 Q. Have we done that yet?

5 A. Not at all.

6 Q. Okay. Before we break, then, why don't you tell  
7 me about that.

8 A. Why don't we take the break, and then we can do  
9 that after lunch.

10 Q. Well, with all due respect, I'd like to hear  
11 what you had in mind before we break.

12 A. Lcx is an entity that secured data and sold  
13 those data -- sold that data as, quote, unquote, "leads"  
14 to advertisers that were purchasing them thinking that  
15 they were individuals that had actually signed up for  
16 offers that were out on the Internet.

17 Q. Have you completed your answer?

18 A. Yes.

19 Q. And now have you blown the company up?

20 A. I don't know.

21 Q. Is there something wrong with what the company  
22 was doing?

23 A. Yes.

24 Q. What was wrong with it?

25 A. It was fraudulent.

1 Q. How so?

2 A. Companies were contracting with lcx to generate  
3 a qualified lead whereby a person would come across an  
4 opportunity, an advertisement via the Internet, and upon  
5 their volition, would actually sign up for whatever that  
6 service or product was.

7 Q. And that's what's fraudulent?

8 A. It's completely fraudulent.

9 Q. How so?

10 A. None of those people took that action.

11 Q. How did the names -- how were the names  
12 generated?

13 A. The names were bought and processed as if they  
14 were sign-ups.

15 Q. When did you first acquire the knowledge of the  
16 fraud?

17 A. From the very beginning.

18 Q. You knew from the very beginning that it was  
19 fraudulent?

20 A. Yes.

21 Q. And so from day one, you were party to the  
22 enterprise that was engaged in this fraudulent activity?

23 A. That's correct.

24 Q. And this enterprise that was engaged in this  
25 fraudulent activity derived 100 percent of its income

1 from this fraudulent activity?

2 A. That's correct.

3 Q. It didn't have any other business?

4 A. No.

5 Q. And so from beginning to end, day one to today,  
6 as you understand it, the business is engaged in a  
7 fraudulent activity?

8 A. Yes.

9 Q. Now, the company did change business models, in  
10 certain respects, at some point in time; is that true?

11 A. Yes.

12 Q. After your departure?

13 A. Perhaps. You're using the word "departure," you  
14 know, but -- maybe. I don't know.

15 Q. You know that there's been some change in the  
16 company's business?

17 MR. FERGUSON: Objection. Vague as to "business  
18 model."

19 BY MR. VESS:

20 Q. Go ahead.

21 A. I'm aware that that's how they advertise  
22 themselves as making the change. I don't know that  
23 the -- the structure of what it is that they do has  
24 changed at all.

25 Q. And so when you say on day one you knew that its

1 business was fraudulent, how did that make you feel?

2 A. Uncomfortable.

3 Q. Who told you that the business was fraudulent,  
4 or did you deduce it or something else?

5 A. It was my deduction.

6 Q. Based on things that you learned from where?

7 A. Based of -- what -- what people's suppositions  
8 were about what it was that they were receiving and what  
9 they were paying for and what it was that they were  
10 getting.

11 Q. But you weren't involved with the sales, were  
12 you?

13 A. I was not involved with the sales.

14 Q. And so how do you know what was said to the  
15 buyers of the product?

16 A. I was still linked in with regards to purchase  
17 orders and insertion orders, and there were clearly  
18 defined definitions from the advertiser or from the  
19 client as to what a generated lead is; and these were  
20 not those.

21 Q. And you knew that the whole time --

22 A. Yes.

23 Q. -- you were with the company?

24 And did you ever once document your discomfort?

25 A. Yes, I actually did.

1 Q. How so?

2 A. In speaking with Mr. Hilinski.

3 Q. So you documented it by what? A tape recording?

4 A. No, no. Not a tape recording.

5 Q. I asked you if you documented your uncomfort.

6 A. There may be e-mails wherein that's addressed.

7 I would need to really dig and find that, though.

8 Q. Well, remember when you started cataloging in  
9 2009?

10 A. Yes.

11 Q. You knew the company was engaged in a very  
12 serious fraud.

13 A. Right.

14 Q. So naturally you documented at that point in  
15 time your uncomfort, right?

16 A. Yes.

17 Q. And so there's a memo in 2009 to the company  
18 about its fraudulent business practice, is there?

19 A. No. You keep making -- there's no -- been no  
20 reference to a memo.

21 Q. Okay. Well, I'm just -- whistle blowers usually  
22 have some sort of -- you're a whistle blower, yes?

23 A. That's correct.

24 Q. And then you've blown the whistle before today  
25 and before walking up to Tim here and getting in his

1 face and saying you were going to blow up the company.  
2 You must have blown the whistle before today?

3 A. Perhaps.

4 Q. Well, you would remember, right? You went to  
5 the -- fill in the blank. Police? FBI? IRS? Where  
6 did you go?

7 A. I haven't gone to any of those authorities.

8 Q. Where did you blow the whistle?

9 A. You -- you're the one who used the term "whistle  
10 blower." I didn't use that term.

11 And you defined what a whistle blower did or  
12 didn't do. I've never identified myself in that manner.  
13 That was your verbiage.

14 Q. And then you answered -- fortunately, we have a  
15 reporter -- "yes." "Yes, I am" --

16 A. I understand the definition of whistle blower.

17 Q. You do?

18 A. Yes.

19 Q. Okay. Good.

20 So you haven't expressed these grave concerns to  
21 any human being outside the company before today?

22 A. That's an incorrect statement.

23 Q. Then let's make a list of the persons outside  
24 the company to whom you --

25 A. Oh, outside the company.

1 Q. Yes.

2 A. I'm so sorry. No. I would say that's accurate,  
3 except for counsel.

4 Q. Your counsel?

5 A. Uh-huh.

6 Q. Audibly, please.

7 A. Yes, correct.

8 Q. And so now, you are suing in this case for your  
9 share of revenues generated by this fraudulent company?

10 A. That's correct.

11 Q. Because you think you get a piece of the fraud  
12 pie?

13 A. That's correct.

14 MR. VESS: Why don't we take our break now.

15 MR. FERGUSON: Sure.

16 MR. VESS: Let's go off the record.

17 (The luncheon recess was held from  
18 12:33 p.m. to 2:10 p.m.)  
19

20 EXAMINATION RESUMED

21 BY MR. VESS:

22 Q. Mr. Marder, we're proceeding with the afternoon  
23 session of your deposition. Are you able to proceed?

24 A. Very well. Let's proceed.

25 Q. All right. These electronic files that you